

**THE STATUS AND FUTURE OF THE  
COBELL LAND CONSOLIDATION  
PROGRAM**

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**OVERSIGHT HEARING**

BEFORE THE

SUBCOMMITTEE ON INDIAN, INSULAR AND  
ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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Tuesday, May 23, 2017

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# OVERSIGHT HEARING ON THE STATUS AND FUTURE OF THE COBELL LAND CONSOLIDATION PROGRAM

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Tuesday, May 23, 2017

U.S. House of Representatives

Subcommittee on Indian, Insular and Alaska Native Affairs

Committee on Natural Resources

Washington, DC

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The Subcommittee met, pursuant to notice, at 2:03 p.m., in room 1324, Longworth House Office Building, Hon. Doug LaMalfa [Chairman of the Subcommittee] presiding.

Present: Representatives LaMalfa, Radewagen, Bergman; Torres, Gallego, Soto, and Hanabusa.

Also present: Representative McEachin.

Mr. LAMALFA. The Subcommittee on Indian, Insular and Alaska Native Affairs will come to order. The Subcommittee is meeting today to hear testimony on the status and future of the Cobell Land Consolidation Program.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman, the Ranking Minority Member, and the Vice Chair, to allow us to hear sooner from our witnesses and help Members keep to their schedules. Therefore, I ask unanimous consent that all other Members' opening statements be part of the hearing record, if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

So ordered.

Also, we will ask unanimous consent that the gentleman from Virginia, Mr. McEachin, be allowed to sit with the Subcommittee and participate in the hearing.

Without objection, so ordered.

## STATEMENT OF HON. DOUG LAMALFA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LAMALFA. The purpose of today's hearing is to perform a status check on the Land Buy-Back Program for Tribal Nations, which was set up by the Obama administration and Congress in the \$3.4 billion settlement of the *Cobell v. Salazar* lawsuit. The program operates according to the Indian Land Consolidation Act, through which the Secretary of the Interior offers to purchase, at fair market value, interests in highly fractionated allotments of land held in trust by the United States for the benefit of individual Indians.

Upon a sale, the Secretary continues to hold title to the allotment in trust, but the beneficial interests purchased from individuals are transferred to a tribe in whose reservation the allotment is situated.

The consolidation of fractionated lands into a single owner reduces the Interior Department's burden in administering these

lands, and it benefits Indians and tribes by increasing the potential for approving productive uses of these properties.

Though the Indian Land Consolidation Act is subject to annual appropriations, the Obama administration saw an opportunity to use the legislative settlement of *Cobell* in order to make a direct appropriation of \$1.9 billion, an appropriation to conduct a land buy-back program the Secretary of the Interior would design and implement.

At the rate in which that administration spent money from the program, it appears all the money will be spent well before 2022, at which time any unspent money must revert back to the Treasury. It is fair to ask—what kind of progress has been made, and has the program been a success, overall?

While the issue is not terribly familiar to those who do not routinely work in the field of Indian affairs, Indian land fractionation has been an enormous burden for the Department, and has denied thousands of individual Indians any economic benefit from their lands. If left unchecked, the Department's responsibilities associated with Indian land fractionation will cut deeply into its annual budgets, draining resources necessary for the Department to meet its other responsibilities to Indians.

Today's witness, the Acting Deputy Secretary of the Interior, will share the Trump administration's perspective as it inherits this fractionation problem and the Land Buy-Back Program.

[The prepared statement of Mr. LaMalfa follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMALFA, CHAIRMAN, SUBCOMMITTEE ON  
INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

The purpose of today's hearing is to perform a status check on the Land Buy-Back Program for Tribal Nations, which was set up by the Obama administration and Congress in the \$3.4 billion settlement of *Cobell v. Salazar* lawsuit. The program operates according to the Indian Land Consolidation Act, through which the Secretary of the Interior offers to purchase, at fair market value, interests in highly fractionated allotments of land held in trust by the United States for the benefit of individual Indians. Upon a sale, the Secretary continues to hold title to the allotment in trust, but the beneficial interests purchased from individuals are transferred to a tribe in whose reservation the allotment is situated.

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Today's witness, the acting Deputy Secretary of the Interior, will share the Trump administration's perspective as it inherits the fractionation problem and the Land Buy-Back Program.

Mr. LAMALFA. The Chairman will now recognize the Ranking Minority Member for any statement.

**STATEMENT OF THE HON. NORMA J. TORRES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mrs. TORRES. Thank you, Mr. Chairman, and good afternoon everyone. We are here today, as stated, to talk about the Cobell Land Consolidation Program, a program which was put into place to lessen some of the results of the disastrous government policies of allotment and assimilation in the late 19th and 20th centuries.

Although the policy of allotment ended in 1934, its impacts are still felt across Indian Country today. This policy dictated a forced conversion of communally held tribal lands into parcels for individual Indian ownership. When the allottee died, title ownership was divided up among all of the heirs, but the land itself was not physically divided. This has resulted in the highly fractionated ownership of much Indian land today.

Today, many of these lands have hundreds, even thousands in some cases, of individual owners, making it difficult, if not impossible, to reach a consensus on land use. The cost to the government to manage these fractionated lands is also substantial, and the costs are rising as every generation inherits more fractions.

The Cobell Land Buy-Back Program was created to strengthen tribal sovereignty and self-determination by identifying and transferring these fractional lands back to the tribes, stimulating economic development and unlocking the land's potential.

Since the start of the program in 2012, more than \$1.1 billion has been paid to landowners, and there has been 23 percent reduction in fractional land interests nationally. This is the equivalent of nearly 2.1 million acres of land has been transferred to tribal governments.

Some tribes have seen a greater reduction in fractionation. The late Elouise Cobell's tribe, the Blackfeet Nation, has seen a 51 percent reduction in fractional interests on their land, and many tribes have already benefited, both economically and socially, from adding these lands to their existing tribal base.

For example, land secured through this program for the Crow Tribe will be used for a new community water plant on land that is now 100 percent tribally owned.

But the *Cobell* settlement is about more than just a judgment that must be honored. It is about a chance to restore the trust and faith of our Native communities in our Federal Government. It is about atoning for the ill-conceived policies of the past, and affording tribes and tribal members a much better future.

Let me state that the *Cobell* settlement never envisioned that the Buy-Back Program would completely solve fractionation across Indian Country. It does not compel landowners to sell, so there is always the option for landowners to opt out. Additionally, all purchase offers reflect fair market value, and Interior would not have known at the time of the settlement what the value would be for each location.

So, it is no surprise that it is estimated that the original \$1.6 billion allocated for this program will not be enough to purchase all of the willing fractionated interests in Indian Country.

But the work the program is doing has laid important groundwork and has been very successful in reducing the amount of fractionated interests to date. This program has been proven successful so far, and I can see no reason to not continue this program and uphold the government's responsibility to Indian Country.

Finally, let me add a note about transparency and accountability. The Ranking Member and other members of this Committee have sent multiple letters to this Administration requesting information, all of which have gone unanswered. I want to stress that it is extremely difficult to work with an administration without timely and accurate responses to our letters. So, I hope our witness here today can assure us that questions and requests about this program will not be met with the same radio silence.

Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Mrs. Torres follows:]

PREPARED STATEMENT OF THE HON. NORMA J. TORRES, RANKING MEMBER,  
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

Thank you Mr. Chairman. We are here today to talk about the Cobell Land Consolidation Program—a program which was put into place to lessen some of the results of the disastrous government policies of Allotment and Assimilation in the late 19th and early 20th centuries.

Although the policy of Allotment ended in 1934, its impacts are still felt across Indian Country today. This policy dictated the forced conversion of communally held tribal lands into parcels for individual Indian ownership. But when an allottee died, title ownership was divided up among all of the heirs, but the land itself was not physically divided. This has resulted in the highly fractionated ownership of much Indian land today.

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Administration requesting information, all of which have gone unanswered. I want to stress that it is extremely difficult to work with the Administration without timely and accurate responses to our letters. So, I hope our witness here today can assure us that questions and requests about this program will not be met with the same radio silence.

Thank you Mr. Chairman, and I yield back.

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Mr. LAMALFA. Thank you, Ranking Member. Now it is time to introduce our witness. It is Mr. James Cason, Acting Deputy Secretary of the U.S. Department of the Interior.

Mr. Cason, under our Committee Rules, you must limit your oral statement to 5 minutes. But if it is longer than that, your entire statement will appear in the hearing record.

Of course, you have to operate the microphone. Press the on button when you begin. The light on the witness microphone will turn green. After 4 minutes, yellow. And then, a red light means red light. So, that will be 5 minutes; and we appreciate you being here.

I would now like to recognize Mr. Cason for your testimony. Thank you.

**STATEMENT OF JAMES CASON, ACTING DEPUTY SECRETARY,  
U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC**

Mr. CASON. Thank you, Mr. Chairman, Ranking Member Torres, and members of the Subcommittee. My name is Jim Cason. I am currently serving as the Acting Deputy Secretary for the Department of the Interior. Thank you for the invitation to appear today to update the Committee on the status of the Department of the Interior's Land Buy-Back Program.

In the interest of time, I will ask the Chairman to enter my written remarks into the record. Thank you.

I worked on the *Cobell* settlement during my time at Interior during George W. Bush's presidency. I spent about 8 years working on this program, so I have a lot of experience dealing with it.

When I departed my post in 2009, I cautiously hoped the ground-work we had laid would result in the consolidation of the fractionated interests. After expending a total of \$1.3 billion to date, it is my view that Interior has not been very successful in materially reducing fractionated interests.

When the program started in 2013, this fractionation was already an enormous burden. At the time I left the Bush administration, we were talking about 4 million fractionated interests. The prior administration now talks about 3 million purchasable interests. So, it is a little bit unclear as to what has been the focus for the program during the last 8 years.

When I returned to Interior, I began to examine the progress the program has made, and I quickly learned that we had expended 75 percent of the funds and consolidated only 14 percent of the interests. I noticed Member Torres had mentioned 23 percent. The staff gave me the figure of 14, so apparently that figure is a little bit in question as well.

The Department is spending anywhere between \$7.50 per acre—and that is for mineral interests only, no surface and no prospects for mineral exploration—to \$648,817 for a single acre of land. In

my opinion, there is no reason we would ever spend that amount of money on a single acre of land.

Meanwhile, the rate of fractionation rapidly grows as more owners pass away. With only roughly \$600 million left in the fund, I have talked to the program staff about updating its strategy to reduce fractionation at an increased pace. However, Congress has an important role in this conversation, and will determine the direction that the program will take.

I see my testimony here today as an opportunity to let Congress know the severity of the situation, and to work with all of you on a meaningful path forward.

Congress has the option to allow the program to continue the use of the remaining dollars to resolve fractionated interests. We can keep going down this same pathway that the prior administration went. Once the funds are exhausted, the program will no longer continue forward. Given its popularity in Indian Country, this may be the preferred approach for Congress.

Or, in the alternative, Congress could consider amendments to allow Interior to leverage the remaining resources to carefully target interests for acquisition. The Department could be granted authority to purchase and hold fractionated interests, which would then be resold to individual Indians or tribal members. The revenue collected would be placed back into the land buy-back fund for future fractionated land purchases, so we would have the opportunity to leverage the money that is still available.

I viewed the Buy-Back Program as a once-in-a-lifetime opportunity to meaningfully address fractionated interests that plague individual allottees and hamper tribal relations and activities. The program, unfortunately, has made relatively little progress in resolving this ongoing problem. In fact, in my mind, we are almost back to where we started 8 years ago, just merely treading water.

Fractionated tracts threaten financial interests, present and future land utilization, and are costly for the Department to manage. I suggest that Congress take a fresh look into the future direction Interior takes on this program: a continuation of the status quo, or language providing authorities to leverage the remaining funds.

Thank you for your time. I am pleased to answer the questions that you have.

[The prepared statement of Mr. Cason follows:]

PREPARED STATEMENT OF JAMES CASON, ACTING DEPUTY SECRETARY,  
UNITED STATES DEPARTMENT OF THE INTERIOR

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, my name is Jim Cason. I am currently serving as the Acting Deputy Secretary of the Department of the Interior. Thank you for the invitation to appear today to update this Committee on the status of the Department of the Interior's (Department or Interior) Cobell Land Consolidation Program, commonly known as the Land Buy-Back Program for Tribal Nations (Buy-Back Program).

I worked on the *Cobell* settlement over the course of my tenure at Interior during President George W. Bush's presidency. When I departed my post in 2009, I cautiously hoped the groundwork we had laid would result in the consolidation of fractional interests, which was a core component of the settlement. Since returning to Interior, I have specifically focused on examining the status of implementing the Buy-Back Program. After expending a total of \$1.3 billion dollars to date and consolidating nearly 700,000 fractional interests (representing the equivalent of

2.1 million acres) on more than 40,000 tracts at 39 locations, it is my view that Interior has not been successful in materially reducing fractional interests.

#### INTRODUCTION—LAND FRACTIONATION AND ITS CHALLENGES

Fractionation results from a past policy of breaking up tribal land bases into individual allotments or tracts and then the division of ownership among more and more owners after the death of the original owner or allottee. Although allotted land itself is not divided physically, the children, spouses, and other relatives of the original and successive landowners inherit undivided common ownership interests in the land. As a result, fractionation has grown exponentially over generations.

Many allotted tracts now have hundreds or even thousands of individual owners. When tracts have so many co-owners, various challenges arise for more than 150 reservations across Indian Country and for Interior, including the following:

First, many fractionated tracts are under-utilized, unoccupied, or unavailable for any purpose. As a result, tribes are experiencing major challenges that impact tribal sovereignty and self-determination. Additionally, many tribal reservations experience a checkerboard ownership pattern, where some tracts of land are owned by non-Indian landowners not subject to tribal jurisdiction, creating jurisdictional challenges. Both fractionated tracts and checkerboard reservations tie up land within reservation boundaries, making it difficult to pursue economic development, housing, and infrastructure.

Second, the Department is responsible for administrative activities related to fractional interests—from maintaining Individual Indian Monies (IIM) accounts for individual landowners to recordkeeping associated with each interest. These activities cost the Department hundreds of millions of dollars annually in appropriated funds. These costs are driven by the number of landowners who own fractional interests across Indian Country, as well as the number of fractional interests. A portion of the Bureau of Indian Affairs' (BIA's) annual budget for Realty, Leasing, Land Title and Records, Probate, Forestry, and Natural Resources (a total of \$126.8 million for FY 2017) relates to the management of trust resources held for individual landowners. For example, BIA maintains records for each interest, documenting how and from whom each segregated interest was inherited. In addition, when an owner of an IIM account or fractional interest in real property dies, current law provides that those trust assets (regardless of value) will be subject to a probate administration. Current estimates provide that it takes on average over 2 years to complete a single probate administration with an average cost in excess of \$3,000 (this is regardless of the underlying value of the estate). As of September 30, 2015, there were approximately 54,000 IIM accounts with current balances between one cent (\$0.01) and one dollar (\$1.00). The aggregate value of these small balance accounts is approximately \$16,000. Thus, it is estimated that it would require over \$162 million to probate the combined value of \$16,000 in those accounts.

Consolidation of fractional interests reduces the potential administrative costs associated with managing fractionated land.

#### BUY-BACK PROGRAM AND RESULTS THUS FAR

The *Cobell v. Salazar* Settlement Agreement (Settlement) provides for a \$1.9 billion Trust Land Consolidation Fund (Fund) to help address fractionation. The Settlement makes the Fund available to the Department to acquire fractional interests in trust or restricted land from individuals who are willing to sell their interests for fair market value. The Fund is available for a 10-year period. Any monies remaining in November 2022 return to the Treasury.

In 2012, immediately after appeals were exhausted through the U.S. Supreme Court and the Settlement became final, the Secretary of the Interior (Secretary) established the Buy-Back Program to implement the land consolidation aspects of the Settlement. The principal goal of the Program is to acquire fractional land interests through voluntary sales that place purchased interests into trust for tribes.

When the Program began purchasing fractional land in 2013, the scope of fractionation included, in part, approximately:

- Approximately 150 unique locations with 97,000 fractionated tracts, totaling 11 million tract acres; and
- 3 million purchasable fractional interests (comprising 8.3 million equivalent acres within the 97,000 tracts) held by 243,000 individual owners residing in all 50 states and in many foreign countries.

Program implementation thus far has focused on a subset of the 150 locations.<sup>1</sup> As detailed in reports issued each year, the Program has considered various factors to determine the sequence of implementation locations, including the severity of fractionation. To date, the Program has announced 105 locations for implementation through 2021.

Since the Program began making offers in December 2013, more than \$1.18 billion has been paid to landowners with interests at 39 of the 105 locations. Specifically, the Program offers landowners fair market value for their fractional interests, as required by the Settlement. As of May 19, 2017, the Program has paid landowners \$1,180,837,370 to consolidate 696,894 interests equivalent to 2,107,109 acres. This amount includes the base payment of \$75 the Program provides to landowners to compensate them for their time and effort spent in reviewing and completing their offer packages; in total, the Program has paid landowners approximately \$6 million in base payments.

As of May 19, the Program has acquired land at an average cost of \$558 per acre, with a range of \$7.50 per acre for mineral interests determined to have no viable economic mineralization to \$648,817 per acre for a 2.52 acre tract that was a tribal acquisition priority. As of February 2017, 75 percent of the interests purchased and 82 percent of the equivalent acres consolidated cost less than \$861 per acre.

More than 13,600 tracts have reached at least 50 percent tribal ownership as a result of Program purchases. Notable increases in tracts with at least 50 percent tribal ownership include Navajo (7,000 percent increase) and Blackfeet (1,600 percent increase). Getting tracts to 50 percent or more tribal ownership enables more effective land use and management. For example, before Program implementation at the Crow Creek Indian Reservation, there was a single tract with approximately 1,200 unique owners. After Program implementation, there are now about 850 unique owners, but the Tribe now owns 50.7 percent of the trust interests. Because the Tribe owns the majority of the trust interests, the Tribe can make land use decisions, making the BIA leasing process more efficient.

The Department is able to close IIM accounts of landowners who sell all their fractional land interests through the Buy-Back Program. To date, OST has closed 9,370 accounts as a direct result of the Program, some of which may reopen. It is difficult to close accounts because the Program is voluntary and because some owners have interests in multiple locations and may also inherit interests in the future once probates are completed.

Taking into account Program and other reductions and increases in interests due to ongoing fractionation and other reasons,<sup>2</sup> the present number of fractional interests associated with the 150 locations is 2,552,201, which is a 14 percent reduction since 2013. The percent reduction for the 39 locations where implementation has occurred is 21 percent. Location specific results include Blackfeet, which has seen a 51 percent reduction in fractional interests.

To date, the Program has expended 75 percent (more than \$1.17 billion) of the portion of the Fund available for purchasing fractional interests. It has also expended 26 percent of the \$285 million allowed for implementation costs (\$73.4 million or approximately 6 percent of land sales), which sum includes mapping, mineral evaluation, appraisal, and outreach costs to implement the Program, some of which is expended by tribal governments through cooperative agreements.<sup>3</sup> The total amount remaining in the Fund is \$585,790,674.

The Program's ability to address fractionation is limited by various factors, especially the size and term of the Fund and the voluntary nature of the Program.

<sup>1</sup> Although the Program has identified 150 locations with fractionated land, it is important to recognize that there are additional land areas, beyond the 150, which are not currently a focus of the Program. This includes certain "off-reservation" or public domain lands where tribal jurisdiction is sometimes unclear, as well as fractionated tracts in Alaska; the Settlement and the Claims Resolution Act of 2010 provide that the Fund will be distributed in accordance with provisions of 25 U.S.C. §§ 2201 et seq., which includes a provision specifically excluding lands located within Alaska. See 25 U.S.C. § 2219.

<sup>2</sup> Moreover, even as the Program consolidates interests, new interests are also being created. Ongoing fractionation has resulted in the addition of nearly 170,000 fractional interests since 2013. Additionally, 70,000 additional interests were created due to partitioning work and nearly 19,000 interests were entered into the BIA title system (Trust Asset and Accounting Management System (TAAMS)) for several locations in Eastern Oklahoma.

<sup>3</sup> The Settlement also authorized the creation of the Cobell Education Scholarship Fund, overseen by the Cobell Board of Trustees, which provides financial assistance to American Indian and Alaska Native students for post-secondary education and training. Based on a formula explained in the Settlement, the Buy-Back Program provided funding to the Scholarship Fund. As of April 2017, the Program reached its cap of \$60 million in transfers to the Scholarship Fund.

The Department has long realized the magnitude of the problem of fractionation in Indian Country. In 2003, Interior staff testified before the Senate Committee on Indian Affairs that addressing fractionation would cost \$10 or \$20 billion if not addressed quickly. In 2012, the Department noted that the Fund would not be sufficient to purchase all fractional interests across Indian Country. In 2016, the Program estimated the cost of remaining fractional interests at more than \$20 billion, which does not include all fractional interests in Indian Country. In addition, the Fund is only available for a limited time of 10 years, currently set to end in November 2022, which has created an additional constraint on Program operations.

Another key parameter is that the Program is voluntary. Landowners who receive offers can choose whether or not to sell their interests. As of May 19, 2017, the Program had sent offers to 135,283 landowners, 58,422 of whom accepted their offer and chose to sell some or all of their fractional interests. While the acceptance rate has averaged 43 percent at the 39 locations where the Buy-Back Program had been implemented to date, it has varied from approximately 80 percent regarding offers for interests at the Swinomish Indian Reservation to approximately 23 percent for offers at the Rosebud Indian Reservation. More than half of the landowners who have received an offer have chosen not to sell their fractional interests. This could be due to a number of reasons, including that the cultural heritage associated with the land is sometimes more important to the landowner than its monetary worth. In a survey issued by the Program in 2016, landowners indicated that reasons not to sell included that they wanted to keep land in the family.

Another limitation is that the Program has avoided certain types of fractional interests due to their complexity and other factors. For example, the Program has not been purchasing interests held by approximately 27,800 deceased individuals with estates to be probated. Nor has it been purchasing the interests held by more than 6,000 individuals under a legal disability (e.g., non-compos mentis or minors). Moreover, there are additional owners with interests that will not be acquired by the Program, such as owners of fee interests or owners of full (1/1) ownership interests, the latter of which may fractionate when the owner passes away.

#### IMPROVING THE IMPACT OF THE PROGRAM

In a recent notice to tribal points of contact at the approximately 150 locations identified by the Program, the Program indicated that it is undergoing a brief strategy review period during which the Department is analyzing potential changes to the Program to further address fractionation. During the strategy review period, the Program will move forward with implementation at those locations where a fully executed cooperative or other agreement has been reached between a tribe and the Program. The Program will wait until the review period is complete before continuing work at locations where no such agreement exists.

I have directed the Buy-Back Program to update its purchase offer strategy to construct landowner purchase offers to better balance reducing fractionation while also facilitating an increase in the number of tracts that reach at least 50 percent tribal ownership. This approach follows evaluation of numerous alternatives and analysis and it considers various factors, including: greater emphasis on the goal of reducing fractionation, existing or potential decision-making ability on tracts, available funding, cost, tribal acquisition preferences, and past or potential response rate.

During the strategy review period, we have invited tribal communities to provide their feedback on various strategies, which could include: further sharing of appraisals, focusing on land value, interest size (e.g., less than 25 percent ownership in a tract), and tract control; facilitating co-owner purchases; or revising the schedule of 105 locations (e.g., adding or removing locations and/or returning to locations that already received offers). We have been clear that potential adjustments could change where implementation may occur, including adding or removing locations and/or returning to locations where purchase offers have already been sent.

While the Department is doing as much as it can to review and improve the Program, it is clear Congress has a role as well. The Department has identified at least two potential paths forward for Congress' consideration. Ultimately, Congress will determine the direction Interior goes.

Congress may leave the initial legislation in place and allow the Program to use the remaining dollars to resolve a small portion of the ongoing increase in fractionation. After those finances are exhausted, the Program would no longer be able to continue further work on resolving fractional interests. Depending on Congress' objectives for the Program, allowing it to proceed untouched may be sufficient considering its popularity among tribes across the country. Many tribes who have

actively participated have already seen the benefits of consolidating the number of landowners for a single tract. The collective advantages across Indian Country are enormous, including the restoration of land productivity and production of long-term sustainability for tribal communities.

That said, the remaining dollars will quickly deplete. In the alternative, Congress could offer amendments to the legislation which would allow the Department to leverage the remaining \$586 million dollars to carefully target interests. Such changes could take the form of granting the Department authority to purchase and hold fractional interests, which would then be resold to an individual tribal member or tribe. The revenue collected from those sales would then be placed directly back into the Buy-Back Program with the intention of funding future purchases of the most fractionated land.

This revolving fund model would afford us the flexibility to target specific tracts, purchase interests therein, and even combine neighboring tracts for sale, which would in turn allow tribes to have greater control of a greater amount of interests. Leveraging the limited remaining dollars gives the Department a future to continue our trust responsibilities to Indian Country while meaningfully addressing the core problem we initially sought to resolve.

The two alternatives discussed above are intended to commence a critical dialogue about the future of the Buy-Back Program. In no way are these suggestions final, nor has Indian Country been formally consulted on these options. I see my testimony today before the Committee as an opportunity to update Congress on the severity of the situation and determine what may be the best path forward. The Department looks forward to working with Congress on this important issue.

#### CONCLUSION

I view the Buy-Back Program as a once in a lifetime opportunity to meaningfully address fractional interests that plague tribal communities and their efforts toward sovereignty and self-determination. Interior's data suggests that the Program has made relatively little progress in resolving this ongoing problem. In fact, in my mind we are almost back where we started 8 years later, just treading water. Fractionated tracts threaten financial interests, present and future land utilization, and are costly to the Department. I suggest that the authorizing and appropriating committees of jurisdiction take a fresh look into the future direction Interior takes on this Program: a continuation of the status quo or language providing authorities to leverage the remaining funds.

This concludes my written statement. Thank you for your time, and I am pleased to answer any questions you may have.

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Mr. LAMALFA. Thank you for your testimony. We will now proceed to questions from Members on the panel, and I will recognize myself first for 5 minutes.

So, indeed, thank you for your information so far. I think you mentioned in your testimony there were 3 million purchasable interests—

Mr. CASON. Yes.

Mr. LAMALFA [continuing]. That had been determined by the Department in 2013. You mentioned that there were 97,000 fractionated tracts, totaling 11 million acres. So, at this point, 14 percent of those that had been eligible have actually been handled with approximately a billion dollars—so, about one-seventh of what could be done. It sounds like we are going to be pretty short of dollars for the short term.

Now let me jump to the lien situation, which was supposed to be put in place so that land would be purchased, the lien would be paid off, therefore putting money back into the fund, like a revolving fund, where the tribe would end up eventually owning the land after the lien was satisfied. So, the revolving fund allows this to keep going on almost into perpetuity, theoretically.

In 2014, the Secretary determined that the lien requirement under the Act does not apply at all to the Cobell Land Buy-Back Program. What do you think of that determination? And is it even a legal determination, under the law?

Mr. CASON. Mr. Chairman, I think it removed one of the tools that potentially we could have used to address the fractionated interest problem. In this case, I mean—

Mr. LAMALFA. You mean in terms of it being a revolving fund to help replenish the—

Mr. CASON. Yes. I think Representative Torres raised the issue that we need to take a look at the long-term answer to address this problem, and that the *Cobell* settlement, in and of itself, did not offer enough money to completely address the fractionation problem. And I agree with that.

The issue for us is what tools do we have to increase our ability to address the fractionation problem. And the approach that is currently being used—or has been used in the past 8 years—has been an approach that does the least amount to leverage the money that Congress made available to address this problem. And one of those factors was the issue of whether or not we could place a lien on these productive tracts that were being given to tribes—

Mr. LAMALFA. Yes, let's focus on that point pretty tightly, that the lien requirement does not apply at all to the Cobell land. How could that determination be made?

Mr. CASON. The lien requirement?

Mr. LAMALFA. Yes.

Mr. CASON. As I understand it, it was a decision by Secretary Salazar that he did not want to impose that upon the tribes when they were given land.

Mr. LAMALFA. But the original law states differently, does it not?

Mr. CASON. It does.

Mr. LAMALFA. All right. I guess these lands currently that are held by individuals in their fractionated form are lands that are held in trust by the U.S. Government for these individuals, correct?

Mr. CASON. Yes, that is correct.

Mr. LAMALFA. OK. And as more generations—as it spreads wider and wider amongst families, largely, the fractions will only get smaller and more numerous. So, that is the point of this.

My understanding is that statistically—though an effort has been made in good faith I think the last few years through this program to consolidate—the normal attrition rate, the numbers are actually getting larger of lands that are fractionated even more and more so as generations move. Is that correct?

Mr. CASON. Yes. It is my understanding from the staff that, largely, what they have accomplished in the last 8 years is dealing with the increase in fractionation that has occurred over time, and that hasn't increased now because of the purchase program. But getting at the base of the fractionated interests that existed at the beginning, we have barely scratched the surface.

Mr. LAMALFA. I guess the question needs to be asked. Are we being successful, or do we need to have an entirely different look at how this would be done?

My view of it is why are we in this situation where we are pushing individual tribal members to be in this, and to have to settle

up with the tribe? It seems like maybe more autonomy, more sovereignty, self determination would let them determine that on their own, especially if a tribe in the neighborhood can see that there is an economic opportunity. Maybe they would come to them for that.

Mr. CASON. I think, Mr. Chairman, what I would recommend is that we actually have more of a conversation about how we would manage this program in the future, because what we are doing right now is not very successful at managing the fractionation problem.

Mr. LAMALFA. OK. I better stop there, my 5 minutes, and I will now recognize our Ranking Member. Thank you.

Mrs. TORRES. Thank you, Mr. Chairman.

Mr. Cason, I apologize if I used the wrong numbers here. The 23 percent reduction that I cited, I actually got that from a press release dated April 24, 2017 from your Department, so—

Mr. CASON. Congresswoman, don't feel like you need to apologize, because I am having a hard time finding accurate numbers as well.

Mrs. TORRES. And that is part of the bigger problem that we have when we talk about transparency issues. It makes it very difficult for you and for me to do our jobs when we don't have enough data.

When this program was created and the \$1.1 billion was allocated, was there ever a conversation about this money being in a place where it could collect interest, so at least if we are not adding to this pool of money, it is in a place where it could collect interest?

Mr. CASON. Yes, that did occur. Congresswoman, I sat for months working with people up here on Capitol Hill, trying to fashion a settlement to the *Cobell* lawsuit during President George Bush's administration, but we did not get all the way through the process before the administration turned over. So, it was discussed as a potential. I am not sure whether it did or did not make it into the final legislation.

Mrs. TORRES. OK. When you talked about the sales going back to individuals, wouldn't that create an even bigger problem, the problem that you already cite in your testimony of a checkerboard of tribal lands, where the lands are not continuous?

Mr. CASON. We have a very complicated land management pattern, that is for sure. With the allotment era that you referred to, a lot of the tribal lands were broken up into allotments and given to individuals, and then we ran into the issues of succession of interests and the fractionation that occurred thereafter.

So, right now, we are sitting there with a huge hodge-podge of individual allotments that are owned by many, many people and tribal interests. And some tribes have interests in the individual allotments, so it is a very complicated land management pattern that is generally not productive.

Mrs. TORRES. So, the problem is that the land continues to fractionate even after we are attempting to reduce fractionation through the Buy-Back Program. You noted that many land interests are still held in single ownership, but can still fractionate after the owner's death. The Bureau of Indian Affairs used to provide will-writing services to landowners to address this and to try to prevent further fractionation. This practice was discontinued in 2005 under the Bush administration. Do you know why?



Mr. CASON. I do. I was actually part of that process. The reason why is we were advised by our attorneys that if we, the Department of the Interior, took on the issue of advising will construction, that we had potential liability for the results. So, the determination was made that we should not be involved in the actual construction of wills.

We did, however, work with other third parties to provide those services, so that the services were available; but it was not the Department of the Interior that was actually presenting a will or drafting the will.

Mrs. TORRES. Through a private contractor?

Mr. CASON. I don't recall whether we had private contractors that we paid for, but we definitely had third-party organizations that were willing to do that work.

Mrs. TORRES. Are there any tribal leaders who have requested the changes that you are suggesting?

Mr. CASON. I have not had any tribal leaders come in. And I think, in fairness to everybody, the way that the prior administration ran this program is a very good deal for tribal leaders. Essentially, if you take a look at it, we provide money to the tribe to go out and search for fractionated interests that they want. We buy those fractionated interests, and then we give it to them. So, I don't think there is any tribal leader that would say, "Gee, I don't want free money."

Mrs. TORRES. Well, not necessarily free money. Remember, they were the original owners of this land that was taken from them, pillaged from them.

Are there any tribal leaders who have supported your proposal through the open comment period?

Mr. CASON. We haven't raised any proposal. And I didn't give you a proposal either, other than what is working—what we have going on right now is not materially addressing the problem. So, if we want to materially address the problem, we need to look at something different than what we are doing. So—

Mrs. TORRES. Thank you. My time has expired. I thought you had spoke of bringing forward a proposal.

Mr. LAMALFA. Thank you. We will move to Mrs. Radewagen for 5 minutes.

Mrs. RADEWAGEN. Thank you, Chairman LaMalfa, Ranking Member Torres, for holding this hearing. And thank you, Secretary Cason, for your testimony today. It is good to see you again.

Mr. CASON. And nice to see you, too.

Mrs. RADEWAGEN. As we are all aware, the original appropriation for the Buy-Back Program was \$1.9 billion, which is less than 10 percent of what Interior has estimated to be in issue with the \$20 billion price tag.

With only \$585 million of the buy-back fund left, it seems obvious to me that this is not something we can just spend our way out of, but rather requires a careful approach and additional planning.

Secretary Cason, you mentioned some of this in your written testimony, but could you please highlight for us some of the strategies or improvements to the program you think would help Interior use

the remaining funds efficiently and maximize the consolidation of fractured interests?

In addition to these strategies, what would you need from Congress, in terms of legislation, to help meet the goals of the program?

Mr. CASON. OK, great question. I think there are a number of things, potentially, we can do; and it would require some differences in legislation to allow us to do it.

The way that the program is structured right now, there is zero opportunity to leverage any of the money that we have left. And that is a potential problem, because as we are going through this process—I think today the President is revealing a budget for Fiscal Year 2018. I think the prospect for the future is fiscal austerity, and trying to save money for the taxpayers.

So, at a rate of \$100 million per 1 percent, trying to address this problem—and that is at figuring it is \$10 billion as opposed to \$20 billion—it doesn't look very cost-effective to dump a lot of money into this program.

Things that we could do differently are, if we had the authority to purchase individual interests and hold those interests, rather than transferring them to the tribe immediately, and consolidate tracts so that we could potentially resell them, would be a way to leverage the funds.

Let me give you an example. If we had a tract that had, say, 30 owners, and 1 of the owners was a 50 percent owner, I think we could go through a process of buying the other 50 percent and then selling it to the original anchor owner who has the 50 percent. But right now we can't do that. Right now, if we buy that other 50 percent, we give it to the tribe, and there is no way that we can leverage the funds.

So, I think there are some things that we could do there that would make it better. I have talked to the staff about their choices and how they buy land. I would never authorize spending \$650 grand per acre for these fractionated interests. It is just way too expensive. I would redirect our staff to buy interests in a much narrower arena, where we get lots of interests for a little bit of money, as opposed to spending a lot of money for relatively few interests. So, that is one of the things that we are taking a look at.

I have discussed with them where we would place our program, and I think there are areas where we can buy fractionated interests on an average of \$400 or \$500 an acre, as opposed to some other areas that they are currently looking at that are anywhere between \$50,000 and \$100,000 an acre. So, I think if we make some wise choices about where we go, we can leverage the money a lot better than the way we do it right now.

I think these are things that we would have to talk to you folks about and see if you have direction you want to offer. Otherwise, it will be basically up to me to try to redefine the program.

Mrs. RADEWAGEN. Thank you, Mr. Chairman. I yield back.

Mr. LAMALFA. OK. We will go next to Mr. Soto for 5 minutes.

Mr. SOTO. Thank you, Chairman. I had more of a policy question about how to potentially avoid some of these issues in the future. It appears from the notes that fractionation occurs because you

have some individuals, Native Americans, who pass intestate. Is that correct?

Mr. CASON. Yes.

Mr. SOTO. And there is nothing under law that addresses that situation currently, other than the local intestate laws of the tribe or of the state?

Mr. CASON. Well, that is not quite true, Congressman. Congress has been wrestling with this issue for quite a while. And in the legislation that we work with, there have been a number of attempts to try and find solutions where somebody passes intestate but has minor fractional interests, and how those are addressed. And there has been some opportunity with legislation to purchase interests in probate, if you know what their values are and you can liquidate those.

But all of the attempts that we have made so far have not been effective at really dealing with this problem, because it is so widespread and so broad that the tinkering on the edges of the margins has not corrected the problem.

Mr. SOTO. So, if we came up with a law that said if there was no claim by the heirs within a certain amount of time, you could look at imminent domain, maybe you could look at up to 20 or 30 years, if we had to then revert back to the tribe after that claim period has lapsed, would that be something that may help to avoid this in the future?

Mr. CASON. I suppose that is true in certain isolated cases. My reaction to your question is we have a category of landowners who are called "Whereabouts Unknown." And in those particular cases where we have a whereabouts unknown, and we don't know how to communicate to them that they have interest in land, then it might be possible having some kind of reversionary clause, or reversionary possibility might address those issues.

But that is not the big driver for our program, so I would say that is one of the marginal fixes where, potentially, we could get some of the interests that way.

Mr. SOTO. What is the scenario for the big—what is the big driver scenario, then?

Mr. CASON. The big driver on this program is how do we stop fractionation to begin with. And I would think that one of the things that we might want to consider—but it would require legislation—is imposing a deed restriction on the allotments to not allow them to fractionate.

And just for example, if you had a fractionated property that had two owners, so each owned 50 percent of undivided interest, you would have a deed restriction that you pass on to an heir the way that you got it, 50 percent—either one or two heirs, but it does not go beyond 50 percent. That would help stem the tide of future fractionation.

But Congress has been unwilling in the past to entertain something like that because everyone likes to have that opportunity of, if I die, I want to pass on whatever assets I have to all my children. So, if I have four or five children, I want to pass on an interest to each of them.

Mr. SOTO. Couldn't we do that as a baseline in the case of intestate, or in the case where a person's intent was not actually listed?

So, it would be the baseline unless any landowner said otherwise; and we would have, in the situation where someone was neglectful to do anything, these baseline rules with the ability to waive, simply by having a writing that says otherwise.

Mr. CASON. Congressman, I think the answer is, in my opinion—Congress is the trust settlor for all of Indian Country, so Congress has the ability to construct a legal construct for how we address these issues. And the balance point that Congress has to strike is that desire to allow families to operate the way that families normally do versus the cost and impositions that occur with fractionation.

If you take a look at what happens as a result, we end up at this point in time with a huge number of fractionated interests that are, basically, overwhelming. And it costs us a ton of money to address these in several different ways. For instance, on realty, we have to keep track of each one of these fractionated interests and make sure that we can add up and have recorded all of the interests on a particular tract, no matter how small they get, so that we can get to one over one.

One of the suggestions I would make to you folks is that if you take any page that is in front of you, we have fractionated interests that, relative to your page, are equal to or smaller than a period at the end of the sentence on a page. We actually measure some of these fractionated interests in parts per quadrillion, so it has gone to a ridiculous end.

So, I am thoughtful that if you really want to solve the problem, that we need to do something different than we have been doing. But if all you want to do is just try to keep it in check, keeping it in check at this point is costing us \$100 million per 1 percent, to keep it in check. It is a difficult problem.

Mr. LAMALFA. Thank you. OK. The gentleman yields back. I will now recognize Mr. Bergman for 5 minutes.

Mr. BERGMAN. Thank you, Mr. Chairman, for having the hearing today. In the first district of Michigan we have eight different tribes. While this is not about our geographical area, it is very informative for me as I serve those folks to ensure that we, as the Federal Government, do the right thing for our Native Americans and all the tribes.

One quick question. Of the monies that were allocated, the \$3.412 billion, how much of that, if any, has been spent on legal fees?

Mr. CASON. As I recall the settlement for *Cobell*, the attorneys agreed to \$99 million as their cut.

Mr. BERGMAN. So, just a one-time fee for that?

Mr. CASON. Yes.

Mr. BERGMAN. So, any monies that are being expended now are not for legal fees?

Mr. CASON. Yes. The remainder of the money was divided, \$1.9 billion of it was associated with buying fractionated interests, and the remainder was sent out as payments to Indian Country to individual allottees who may or may not have been affected by the accounting of the Department.

Mr. BERGMAN. OK, thank you. I yield back.

Mr. LAMALFA. The gentleman yields back. We will go for a second round here.

I would like to follow on that—oh, I am sorry, I messed that up. I recognize Ms. Hanabusa for 5 minutes. My apologies.

Ms. HANABUSA. That is all right. Thank you, Mr. Chair.

Mr. Cason, in reviewing the recent FR submittals in the Federal Register of April 12, 2017, it seems to say there that you had a listening session. Were you a party to that listening session?

Mr. CASON. No, ma'am. I didn't go to that; my staff went.

Ms. HANABUSA. Your staff went. But it seems to be an annual event, correct?

Mr. CASON. Yes.

Ms. HANABUSA. So, I assume that your staff, who may last through administrations, you have some there who have actually attended these listening sessions over a period of time? Would that be a correct assumption?

Mr. CASON. Yes, ma'am.

Ms. HANABUSA. I assume also that, because of the deadlines—in other words, you know we are going to stop funding in 2022, or we are going to run out of funding in 2022, and at that point in time it is actually estimated that more than 4 million equivalent purchasable fractionated acres will still exist.

And I assume also at that time they are saying that there will be some funds that will be returned to the Treasury, as well. It is anticipated.

Mr. CASON. I would say, Congresswoman, that the intention of the Department in the last administration was to spend all of that money before the end of 2022, so that none of it would be returned.

Ms. HANABUSA. But would you still agree that there would be an expectation that about 4 million acres would still be fractionated out there?

Mr. CASON. About 4 million fractionated interests, total. The purchasable piece is basically an artifact of the program, where they have separated out a number of fractionated interests that they have lesser interests in. They could be off-reservation tracts, they could be tracts owned by non-coms, or could be tribal interests, as well, that did not need to be purchased. So, they have separated out a number of interests that they did not plan to purchase, but they still exist.

Ms. HANABUSA. I am very interested in one fundamental issue, which is *Cobell* is a settlement of a lawsuit. Right? And the legislation that fell from that are all in an effort to settle that lawsuit.

So, what happens in 2022, in your mind, when you still have fractionated shares out there, we no longer have money, and there are still about 4 million out there—what do you anticipate occurring? Do you anticipate going back to the courts and saying, "This is the best job we could do," or do you come back to Congress and say, "We still have to do more"?

I mean, I assume this is something that is going on in these listening sessions, as to where do we go from now to 2022, and after 2022.

Mr. CASON. I think that is a great question. The staff that has been working on this program over the last administration has

expressed a view that when the money runs out, they are anticipating asking Congress for more money.

In my opinion, I doubt that this Administration would do that, that we have already been given what I consider to be a once in more than one generation opportunity to address this problem, and that the problem has not been effectively addressed. So, I doubt that this Administration would come to Congress and ask for a big pile of more money to continue doing the same thing.

Ms. HANABUSA. What would be this Administration's position to Congress as you would anticipate it to be?

For example, would it be, "Look, we did what we said we were going to do under the initial settlement of this lawsuit, we had a sum certain and we spent that money, and therefore we have settled"? Do you believe that would be the position of this Administration, so the *Cobell* settlement is deemed to be finished or satisfied?

Mr. CASON. Well, I think if you continued forward doing nothing different, then you could spend all the money and say we have satisfied the *Cobell* requirements. The reason that I came up here to visit with you folks is because we have at least an opportunity to think about other ways to leverage the remaining money.

So, \$1.3 billion of the \$1.9 billion is gone, and we have \$600 million, basically, left. So, the choice today is do we want to approach this problem in a little different way? Is there a way that we can actually change the requirements so that we can leverage the other \$600 million that is there? Or is our goal basically just to allow the program to exhaust itself under the prior administration's plan, and everybody will be happy with the way the program is implemented, but it doesn't get anything done?

The thing that is important—

Ms. HANABUSA. I am sorry, my time is expired.

Mr. LAMALFA. Ms. Hanabusa, would you like to do your second round right now, since you are on a roll?

Ms. HANABUSA. If you will—

Mr. LAMALFA. Five more minutes.

Ms. HANABUSA. Right, thank you.

Mr. LAMALFA. You are welcome.

Ms. HANABUSA. So, you have me for 5 more minutes, so bear with me. So, those are the alternatives, as I see it. I assume that you have had this discussion, as well. We are going to either let the program go the way it is, and at that point in time you would have said we have done everything and, therefore, the *Cobell* settlement is satisfied.

Mr. CASON. Is done.

Ms. HANABUSA. And your other alternative is, OK, we have \$600 million more, which means that you are accepting the amount of money that has been allocated—because, in your words, that seems to be more than a generous amount for a generation to satisfy.

In that situation, do you not believe that you need the whole "concurrence" of the plaintiffs and the parties in interest in order to modify the program as it developed over a period of time, and that is not something that the Secretary can unilaterally implement?

Mr. CASON. Actually, no, I don't think that. And the reason I say that is because the settlement was basically a legislative settle-

ment, so Congress has the opportunity to amend that settlement if they choose to.

If we were in a different environment, where it was a litigation settlement, then I would agree with you. We would need the plaintiffs to agree with what we are doing.

Ms. HANABUSA. But—

Mr. CASON. But in this particular case, I don't think you do.

Ms. HANABUSA. But don't you believe that the settlement, irrespective of the fact that it really did receive the concurrence of the plaintiff—so, even if it may not have been just purely a legal settlement, it still had the concurrence of the plaintiffs?

So, do you still believe that the Congress itself can take the unilateral action of passing another piece of legislation and saying this is how we are going to expend the remaining amounts of the *Cobell* settlement, and still have it qualify as the settlement?

Mr. CASON. I think Congress has the authority to make changes. And, Congresswoman, what I would suggest is what we are doing is not working. We can keep doing what we are doing right now and change nothing, and end up spending the other \$600 million and basically not accomplish much. So, we can do that, and I am sure the plaintiffs would be happy and the tribes would be happy. But it does not help solve our fractionation problem.

Ms. HANABUSA. But, Mr. Cason, the problem that I have with what you just said is the fact that Congress created the problem back in 1887, or whatever that year was, in the Dawes Act. I mean we created the problem.

Mr. CASON. Right.

Ms. HANABUSA. We created, obviously, the *Cobell* settlement. And now you are coming in and saying we have to do it again. We have to do something else and take another stab at this. And I don't know if we are going to do it any better.

But the bottom line, it seems to me, in all of this is that you are having these annual listening sessions. What are the people saying to the Department? What are they saying? What do they want? Is their reaction the same as yours? In other words, it is not working?

Mr. CASON. No. And I would say, I have to bifurcate the answer a little bit. What I mean by that is there is a problem for—

Ms. HANABUSA. You have a little more than a minute, so you have to be very concise.

Mr. CASON. Well, Mr. Chairman, could I have a little bit more time to explain?

Mr. LAMALFA. We will see how you do.

Mr. CASON. OK. I think you have to bifurcate that. We, which is Congress and the executive branch, have a problem with fractionation. And on the other side, when we are talking to folks in the listening sessions, those people do not have our same problem.

The folks that go to the listening sessions are more interested in dividing the pie that is currently available, that \$600 million. They are interested in how much of this am I going to be able to get—so I want money to come to my reservation, I want the number of dollars to be bigger, I need a contract so I can go out and look for interests, I need you to buy my interests.

All of the listening session is oriented toward the people who want to consume the money. But for us, Congress and the

executive branch, we have a different problem. We have to manage whatever these fractionated interests are. I have a realty program in the Bureau of Indian Affairs that has to keep track of these 4 million interests, so we spend tens of millions of dollars every year trying to do that.

If an individual has a fractionated interest, I have to probate it. So, we spend thousands of dollars on those probates, each one of them, and the prognosis for the number of probates we have to do is up to \$168 million to do those.

I also have other programmatic issues that are affected by this that we, collectively, have to address. So, there are two different problems that we are trying to address, or two different issues. One is our collective problem, and the other is how people want to divide up the pie—we don't get that conversation in a listening session.

Ms. HANABUSA. Thank you, Mr. Chair, I yield back.

Mr. LAMALFA. OK, thank you. Going back here once again, this is a kind of an obtuse situation we have here. But going back, we have a 1994 law that was intended to fix past problems of bad recordkeeping.

So, when the lawsuit came about in 1996, the *Cobell* lawsuit, it was originally seeking to just require the Interior to complete its job on going back and making an accounting of these lands, who owned them, et cetera, et cetera. More of a political solution was found in 2009 with the *Cobell* lawsuit to kind of wipe away the past and go forward with the \$1.9 billion out of a total picture of \$3.4 billion to settle this.

So, we come back to the original question being—how is the Department doing on accounting for the lands, and who all owned it? Instead, we are just going to buy pieces of those lands and give them to the appropriate tribe in that neighborhood, in that reservation.

You talk about the listening on that. Yes, of course, there are people that, if you are buying these pieces, these small parcels, whatever they are, from individual Indians, and now it is a gift to a tribe overall, of course they are happy to see that. The lien issue worked pretty well, as a revolving fund, since the problem we were trying to fix was all these little tiny fractions of land.

Now, all of a sudden, we have a drain on the Treasury, since the lien process, or some other mechanism of fronting the money to buy it from the individual, these lands that are held in trust for individual Indians—and no one wants to use eminent domain, it was being talked about, or some other trick. We have done enough to the Indians on their land over centuries as it is, so we are going to respect that.

And we also know that for a lot of individuals there is a heritage that goes with this land. There is a long-term—a family. My family, we are on the fifth generation of farming our land in Northern California, and that means something.

So, we really see that a solution is not going to be more money in 2022, or in some years from now when this runs out. We don't seem to be able to leverage it, unless we were able to reverse the course that Mr. Salazar determined a few years ago, that a lien is



not necessary or usable. If we are not doing either one of those, then we are on an unsustainable path here.

So, wouldn't the solution be outside of this box, where we have individual tribal members that, if they didn't have the Federal Government after them saying, hey, we have to—if the Federal Government wasn't in the business of accounting for it, and spending tens of millions of dollars of being in the realty business, as you said, maybe they would just like to be left alone. In order for them to be left alone, what if the land became in their individual full property right?

And then, if they are in the neighborhood of a developable resource, and somebody says, "Hey, you know what? You 64 members of this family here that all have this little piece, you have something there that we could develop here, economically," that the tribe could come in and say, "You know, we will buy all your  $\frac{1}{64}$ , a fraction of all that, or work with you on that and develop whatever might be there."

We have Washington, DC, and their meddling out of the way of what the tribes would like to do. Wouldn't that be the win? There is your question.

Mr. CASON. Mr. Chairman, there are lots of possibilities in Indian Country to address things like that. And what I mean by that is, one of the things that we have researched and drawn conclusions on is how many fractionated interests can landowners actually sustain to effectively manage their lands. Because our first choice is, if a landowner is able to exercise jurisdiction over their land, and make choices about how to effectively use it, that is terrific. That is what we want.

And what we found is once you get beyond about 10 or 12 interests, it becomes effectively unmanageable, because—

Mr. LAMALFA. Well, let's jump in there. You talked a while about maybe one happens to have 50 percent and the other 50 percent of a particular parcel is divided amongst 12.

Mr. CASON. Right.

Mr. LAMALFA. Well, that seems like it might be a family decision, if they are motivated by an idea somebody has of developing or doing something economically with that land. We do not need Washington, DC telling them how to do that.

Mr. CASON. Right.

Mr. LAMALFA. So, if it is land that is held in trust, then perhaps—would it be converted to some other form, fee land or something, where they have the full property right, and they can determine and they can account for it, and they can decide amongst themselves, like, well, why don't all 12 of us decide to—1 block of 12, 50 percent, another—you know, something like that?

Mr. CASON. Right.

Mr. LAMALFA. How would that look?

Mr. CASON. Well, we actually do that now.

Mr. LAMALFA. But again, the Department is complaining about tens of millions of dollars administration, and we have the Department in the middle of their business.

Mr. CASON. Well, I think it ends up being an issue of how many of these fractionated interests—let me go back for a second.

We have on the order of—

Mr. LAMALFA. I better—hold that thought until the next round, so I can recognize our colleagues. Thank you.

Mr. CASON. I am sorry.

Mr. LAMALFA. OK, no, it is a long deal.

Mrs. Torres for 5 minutes, thank you.

Mrs. TORRES. Thank you, Mr. Chairman.

It seems like we were going back and forth, talking about theories, and maybe we ought to try this, maybe we ought to try that. The primary goal of the program is to strengthen tribal sovereignty, correct?

Mr. CASON. Actually, no. The primary reason for the *Cobell* settlement was to address the individual accounting for individuals in Indian Country.

Mrs. TORRES. Which would strengthen tribal sovereignty and self-determination.

Mr. CASON. Not really. The *Cobell* settlement, or the *Cobell* litigation, was basically oriented toward addressing issues of accounting for individual Indians and the payments of royalties to them. It became an extra piece to add the \$1.9 billion on to the *Cobell* settlement—

Mrs. TORRES. Let me stop you because time is going by really quick, and it seems like we are going back and forth and not even sticking to your statement. So, I am getting a lot of very confusing information. This is why we wrote a letter or letters, and are requesting information back in written form—

Mr. CASON. OK.

Mrs. TORRES [continuing]. So that I can compare apples to apples. I mean certainly you can agree with me on that issue.

Land is going to have different costs in different parts of the country. So, I think that when we look at maximizing this dollar, if you are only looking at the cost of land, and not really looking at the bigger picture of what the tribes really need, it is a short-sighted plan.

At some point, I hope that you will, in consultation with the tribes, come up with an ending to this. Right? Whether it is a request for more money to Congress, whether it is figuring out how this plan—but not quite a plan—that you have proposed is going to be implemented. But we need to have that as a starting point. Do you understand what I am saying?

Mr. CASON. That is part of the reason I am here, what we are doing is not working, and so I wanted to start a conversation with you folks about what can we do differently.

Mrs. TORRES. I understand that, sir, but your testimony, what you have verbally stated to us and what you have sent to us in writing, is a bit conflicting, and that is why I am trying to figure out, really, what your intentions are in moving forward.

Let me ask you this. Don't tribes already have the authority to purchase a fractionated interest from individuals?

Mr. CASON. They do have certain authorities to purchase interests.

Mrs. TORRES. But they are not—

Mr. CASON. But why would they do that, when we give it to them for free?

Mrs. TORRES. No. Or they wouldn't do that because maybe they don't have the money. Not every tribe has a casino in their backyard, or has a very successful business that is a money-making business for them. Not all tribes are the same, sir. I hope you understand that.

Mr. CASON. Yes, Congresswoman, I do understand that, and I have spent a lot of time with the Indian tribes. So, yes, I do understand that.

Mrs. TORRES. So, if they can already purchase the land and they are not doing it because they cannot afford it, or because they are, as you stated, too greedy to buy their own land—I don't know how that would happen, when every conversation that I have with them is about getting the property under tribal sovereignty. It just seems to me that we have really set them up to fail.

When this program was initially created, we should have known that we were not putting enough money, and we should have written an ending to this program. Where do we go, should the \$1.1 billion not be enough? We should have been collecting interest on this money that has been sitting there in an account somewhere.

Once again, I think we have been shortsighted in helping tribes purchase their own land. So, I am disappointed with our ability to get information from the Department, and I hope to be able to follow up with you, and I hope that you will be in a better position, so that we don't have to talk about press releases that have inaccurate information.

Mr. CASON. OK. Thank you, Congresswoman.

Mr. LAMALFA. The gentlelady yields back.

Mr. Gallego, would you like to be recognized for 5 minutes? Not quite? OK.

It's back in my court, then. All right, earlier on you suggested a couple of options.

Status quo, which I think there is probably fairly broad dissatisfaction with the sustainability of that. We do not seem to be narrowing, at a pace, the number of fractionated lands in a way that you would call a success, long term.

One idea, again, letting the Interior come back to the revolving fund concept, the lien concept, whichever term you want to use, so that a tribe that wants to come forward, or a group of people that are individual tribal members that own the lands, are approached with an economic opportunity. Maybe they have energy, maybe they have something else on that land that they would develop. They could then move forward on their own without the Department of the Interior being that big brother in the way of that.

So, talk a little more about the revolving fund and how you felt that was going before that was wiped away in the, I believe, 2009 decision. Oh, 2014, sorry, yes.

Mr. CASON. I am not familiar that the Department actually collected any monies out of the revolving fund, one way or the other. I would be happy to get back to you with an answer on that. My sense is that establishing liens in the past has been problematic, because the Department never spent very much energy in collecting any of the monies generated by Indian lands that were under lien.

So, I suspect I wouldn't find very much if I go look, but I would be happy to do that.

Mr. LAMALFA. OK. I would suspect it is probably close, because the numbers we are talking about, the numbers of parcels or potential, could become an accounting nightmare, additionally, to what you already have.

Mr. CASON. Yes, that is one of the reasons the Department did not collect liens.

Mr. LAMALFA. So, a streamlined process of consolidation that leads to the autonomy of individuals, if they want to be participants or not. Again, if people have this fractionated land and they are happy with it, then who are we to say, "Well, you need to cut a deal with your cousins or a governing tribe somewhere," if they are happy with that situation? Again, it is a heritage issue for some.

So, what is the most effective tool to get the Department of the Interior out of the middle of that process of accounting for it or not? I think that is an important discussion, over-arching, so we are not doing this any more. Because I keep coming back to the question when it was first brought to me. Why are we doing this?

My interest, part of the interest in working on this Committee is working for more Indian sovereignty and more of their own ability to pursue their interests as they see fit. And this DC partnership is not always very conducive to that, and on the fiscal side, it has not shown to be cost-effective for the taxpayers.

So, with that, I will pause here. Mr. Gallego, would you like to be recognized for 5 minutes? Mr. Gallego.

Mr. GALLEGO. Great. Thank you.

Mr. Cason, is that correct?

Mr. CASON. Yes.

Mr. GALLEGO. Thank you, Mr. Cason. I had to catch up and read your testimony. Just maybe one or two questions.

The first question is, the Indian Reorganization Act was enacted to restore tribal homelands to the tribes after the Dawes Act, which, as you know, resulted in over 90 million acres of land loss for the tribal—tribes have still not recovered from the failed policies of the Dawes Act, and they are still—now the current statements out of the Department and a hearing scheduled for tomorrow to see how the Indian Reorganization Act can be updated.

So, what is specifically your view on where the Indian Reorganization Act needs to be—how it should be updated, and what ways do you think that should happen?

Mr. CASON. I think for answering this question we do not need to do anything with the Indian Reorganization Act.

Mr. GALLEGO. So, you do not believe that we have to update it at all? It currently works as—it is highly functioning and it is serving its purpose?

Mr. CASON. I would say that since the Act was in 1934, there has been so much successive legislation that we do not need to go back to the 1934 Act to address this problem.

Mr. GALLEGO. I yield back. Thank you.

Mr. LAMALFA. Do you have any more questions, Mr. Gallego? OK, the gentleman yields back.

I think, with that, if there is no more business in front of us here—I do appreciate Mr. Cason for his appearance today and the important testimony, as we work through this.

I think Committee members would like to follow up with additional questions, so we would have that opportunity to have you respond to those in writing. Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following the hearing for the hearing record, and it will be held open for 10 business days for these responses.

If there is no further business in front of the Committee, without objection, the Subcommittee stands adjourned.

[Whereupon, at 3:12 p.m., the Subcommittee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE  
COMMITTEE'S OFFICIAL FILES]

- Ranking Member Torres Submission: Choctaw Nation of Oklahoma Letter addressed to Chairman LaMalfa and Ranking Member Torres with written testimony dated May 23, 2017.
- Ranking Member Torres Submission: Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation Comments on Land Buy-Back Program for Tribal Nations Under the Cobell Settlement dated May 31, 2017.
- Ranking Member Torres Submission: Comments for the Record from the Quinault Indian Nation dated May 23, 2017.
- Ranking Member Torres Submission: Statement of Troy Scott Weston, President of the Oglala Sioux Tribe dated May 23, 2017.

